

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

SHAD SMITH,)	
)	
Plaintiff,)	
)	
v.)	4:06-cv-172-WGH-JDT
)	
BELTERRA RESORT INDIANA, LLC,)	
)	
Defendant.)	

ENTRY ON DEFENDANT'S SECOND MOTION IN LIMINE

This matter is before the Court on Defendant's Second Motion In Limine filed November 21, 2007. (Docket No. 49). Plaintiff has filed no response.

In its motion, Defendant seeks to exclude testimony or evidence concerning the following: (1) Plaintiff's fall down a stairway in 2007; and (2) Plaintiff's back problems and subsequent back surgery. The Court addresses these items as follows:

(a) Plaintiff's 2007 Fall

It appears from the record thus far that Plaintiff will argue that the crush injury to her foot rendered her permanently impaired and has had a lasting impact on her foot strength. Whether or not her fall in 2007 was a result of weakness in her foot will be an issue of fact for the jury to decide at trial. Defendant's Second Motion In Limine concerning Plaintiff's 2007 fall is, therefore, **DENIED**.

(b) Plaintiff's Back Problems and Surgery

Defendant suggests that Plaintiff may attempt to tie her back problems to her foot injury. The issue of whether back problems developed as the result of a


foot injury requires the witness to have some knowledge of medical causation. No such medical evidence has been provided to date. Absent some medical evidence that demonstrates that Plaintiff's back problems are related to her foot injury, Plaintiff may not argue that the two conditions are related. Rules 701 and 702 of the Federal Rules of Evidence prohibit testimony from lay witnesses on matters of opinion reserved for experts. Defendants' Motion In Limine with regard to this matter is **GRANTED**.

Conclusion

For the reasons stated above, Defendant's Motion In Limine is **GRANTED, in part, and DENIED, in part.**

SO ORDERED.

Dated: November 29, 2007



WILLIAM G. HUSSMANN, JR.
Magistrate Judge

Electronic copies to:

Wilmer E. Goering II
ECKERT ALCORN GOERING & SAGE
goering@eaglaw.com

John R. Shelton
SALES TILLMAN WALLBAUM CATLETT & SATTERLEY
rshelton@stwlaw.com

Andrew David Steere
steere28@yahoo.com